



House of Representatives

General Assembly

File No. 588

February Session, 2000

Substitute House Bill No. 5577

House of Representatives, April 13, 2000

The Committee on Finance, Revenue and Bonding reported through REP. MCDONALD of the 148th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

An Act Concerning Brownfields Redevelopment.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) As used in this act:

2 (a) "Brownfield" means an abandoned, idled or under-used
3 industrial or commercial facility or site where development, financing,
4 expansion or redevelopment is complicated by real or perceived
5 environmental contamination.

6 (b) "Brownfield inventory" means the inventory of brownfields and
7 brownfield redevelopment sites maintained by the Connecticut
8 Development Authority.

9 (c) "Brownfield redevelopment site" means any real property,
10 improvements, or "vacant commercial plants" as defined in section 8-
11 187 of the general statutes, located in the state, listed on the brownfield
12 inventory, and that: (1) Has been subject to a "spill" as defined in

13 section 22a-452c of the general statutes; (2) is an "establishment" as
14 defined in subdivision (3) of section 22a-134 of the general statutes; or
15 (3) is a "facility" as defined in 42 USC 9601(9).

16 (d) "Brownfield redeveloper" means the person who has assumed
17 responsibility and liability for undertaking and completing a
18 brownfield redevelopment.

19 (e) "Brownfield redevelopment" means the remediation, renovation,
20 development, or improvement of a brownfield redevelopment site in
21 accordance with applicable laws and regulations.

22 (f) "Chairman" means the chairman of the Connecticut Development
23 Authority.

24 (g) "Priority brownfield redevelopment project" means a brownfield
25 redevelopment that, based on a development plan prepared by the
26 brownfield redeveloper and submitted to the chairman, (1) may add
27 new economic activity and employment in the state, (2) can be
28 expected to generate new state tax revenue, (3) can be expected to
29 produce an economically viable brownfield redevelopment facility, (4)
30 is listed on the Brownfield inventory, and (5) will generate direct and
31 indirect economic benefits to the state that will exceed the amount of
32 the brownfield investment.

33 Sec. 2. (NEW) Any brownfield redeveloper may submit an
34 application to the subsidiary created under subsection (l) of section 32-
35 11a of the general statutes containing sufficient information to
36 reasonably demonstrate that a brownfield redevelopment or
37 brownfield redevelopment facility should be a priority brownfield
38 redevelopment project for said subsidiary. The chairman may approve
39 the application if the brownfield redeveloper has demonstrated
40 eligibility. If the chairman rejects an application, then he shall
41 specifically identify the defects in the application, and explain the
42 reasons for disapproval. The chairman shall render a decision on an

43 application no later than sixty days from its receipt. Failure to render a
44 decision within that time shall be deemed an approval of the
45 application. The chairman may adopt regulations, in accordance with
46 the provisions of chapter 54 of the general statutes, necessary for the
47 purpose of implementing this section. Any person may petition the
48 chairman to include a site or facility in the brownfield inventory. If
49 such person submits sufficient evidence to show that a site or facility is
50 a brownfield, or is a brownfield redevelopment site, then the chairman
51 shall add such site or facility to the brownfield inventory.

52 Sec. 3. (NEW) Brownfield redevelopers are innocent landowners as
53 defined in subdivision (1) of section 22a-452d of the general statutes, or
54 prospective purchasers or owners of contaminated real property as
55 provided in section 22a-133a of the general statutes, or subsection (b)
56 of section 22a-133bb of the general statutes, who meet the
57 requirements set forth in subdivision (1) or (2) of subsection (a) of
58 section 22a-133aa of the general statutes or subsection (a) of section
59 22a-133bb of the general statutes, and shall not be liable for any
60 cleanup and removal costs or damages pursuant to any other statutory
61 or civil common law, to any person, other than the federal
62 government.

63 Sec. 4. Subdivision (1) of section 22a-452d of the general statutes is
64 repealed and the following is substituted in lieu thereof:

65 (1) "Innocent landowner" means: (A) A person holding an interest in
66 real estate, other than a security interest, that, while owned by that
67 person, is subject to a spill or discharge if the spill or discharge is
68 caused solely by any one of or any combination of the following: (i) An
69 act of God; (ii) an act of war; (iii) an act or omission of a third party
70 other than an employee, agent or lessee of the landowner or other than
71 one whose act or omission occurs in connection with a contractual
72 relationship, existing directly or indirectly, with the landowner, unless
73 there was a reasonably foreseeable threat of pollution or the

74 landowner knew or had reason to know of the act or omission and
 75 failed to take reasonable steps to prevent the spill or discharge, or (iv)
 76 an act or omission occurring in connection with a contractual
 77 arrangement arising from a published tariff and acceptance for
 78 carriage by a common carrier by rail, unless there was a reasonably
 79 foreseeable threat of pollution or the landowner knew, or had reason
 80 to know, of the act or omission and failed to take reasonable steps to
 81 prevent the spill or discharge; or (B) a person who acquires an interest
 82 in real estate, other than a security interest, after the date of a spill or
 83 discharge if the person is not otherwise liable for the spill or discharge
 84 as the result of actions taken before the acquisition and, at the time of
 85 acquisition, the person (i) does not know and has no reason to know of
 86 the spill or discharge, and inquires, consistent with good commercial
 87 or customary practices, into the previous uses of the property; (ii) is a
 88 government entity; (iii) acquires the interest in real estate by
 89 inheritance or bequest; or (iv) acquires the interest in real estate as an
 90 executor, [or administrator of a decedent's] administrator or fiduciary
 91 of an estate.

92 Sec. 5. This act shall take effect from its passage.

CE Committee Vote: Yea 26 Nay 0 JFS C/R FIN

FIN Committee Vote: Yea 45 Nay 0 JFS

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Potential Significant Cost

Affected Agencies: Connecticut Development Authority (quasi-public), Department of Environmental Protection

Municipal Impact: Potential Savings

Explanation**State and Municipal Impact:**

To the extent that this bill, by exempting brownfield redevelopers from liability and expanding the definition of innocent landowner to fiduciaries and administrators of any estate rather than only a decedent's estate, releases owners of polluted property from financial liability, there could be significant cost to the state for containment, removal, mitigation of a spill or discharge. Costs for remediation are in the tens of thousands to multi-millions of dollars per site. If a municipal property were involved, there could be savings to municipalities for clean up costs.

Designating a project a "priority brownfield redevelopment project" has no fiscal impact since there are currently no benefits attached to this designation.

OLR Bill Analysis**sHB 5577*****AN ACT CONCERNING BROWNFIELDS REDEVELOPMENT.*****SUMMARY:**

The bill exempts any brownfield redevelopers from liability for any remediation, cleanup, and removal costs or damages under statutory or civil common law to anyone other than the federal government. A brownfield redeveloper is defined as a person who has assumed responsibility and liability for undertaking and completing a brownfield redevelopment.

The bill also specifies that brownfield redevelopers are either (1) innocent landowners or (2) prospective purchasers or owners of contaminated real property, if they have an approved remediation plan or an approved final remediation action report for the subject property.

The bill expands the definition of innocent landowner to specifically allow for fiduciaries, and for administrators of any estate, rather than only decedents' estates. By law, a person who acquires an interest in a site after it was contaminated, and is not otherwise responsible for the contamination, may be an innocent landowner if he (1) followed good commercial or customary practices regarding inquiries into past site uses and did not know, or have reason to know, of the contamination, (2) is a government entity, (3) acquired the site by inheritance or bequest, or (4) acquired the site as an executor or administrator of a decedent's estate.

The bill authorizes the Connecticut Development Authority (CDA) chairman to designate a project a "priority brownfield redevelopment project," although it does not indicate any benefits of this distinction.

EFFECTIVE DATE: Upon passage

INNOCENT LANDOWNERS, PROSPECTIVE PURCHASERS, OR OWNERS OF CONTAMINATED PROPERTY

Under the bill, brownfield redevelopers are innocent landowners or prospective purchasers or owners of contaminated real property if they have a Department of Environmental Protection (DEP)-approved or licensed-environmental-professional (LEP)-approved remediation plan or a DEP- or LEP-approved final remediation action report for the property. (The bill refers to purchasers and owners provided in section 22a-133a; that section does not mention either. Section 22a-133aa refers to both and may be the intended citation.) By law, innocent landowners are generally protected against liability to the state for cleanup costs beyond the value of the contaminated property. (Other provisions of the bill protect brownfield redevelopers from any liability for such costs except to the federal government.) By law, prospective purchasers and owners are eligible to receive a covenant not to sue from the DEP if they meet certain criteria regarding responsibility for contamination and affiliation with other responsible parties.

PRIORITY BROWNFIELD REDEVELOPMENT PROJECTS***Approval Process***

The bill authorizes the CDA chairman to designate a brownfield redevelopment as a priority brownfield redevelopment project, upon application of the developer. Developers must submit the application to a CDA brownfield-remediation-and-development subsidiary. The application must demonstrate, based on a development plan, that the project (1) may add new economic activity and employment in the state, (2) can be expected to generate new state tax revenue, (3) can be expected to produce an economically viable brownfield redevelopment facility, (4) is listed on the brownfield inventory, and (5) will generate direct and indirect economic benefits to the state that will exceed the amount of brownfield investment. It is unclear what benefits or actions accompany the priority brownfield redevelopment project designation.

The CDA chairman may approve the development plan if the redeveloper has demonstrated eligibility. If the chairman rejects the application, he must indicate why and identify application defects. The

chairman must act on the application within 60 days. If he fails to do so, the application is deemed approved.

CDA Regulations

The bill authorizes the CDA chairman to adopt regulations, rather than procedures, necessary to implement the program.

BROWNFIELD INVENTORY

Under the bill, any person can petition the chairman to include a site or facility in the CDA-maintained brownfield inventory. The chairman must add such site to the inventory if the person submits sufficient evidence to show the site is a brownfield or a brownfield redevelopment site. (The term “brownfield redevelopment site” has no effect in this context since, to be considered a brownfield redevelopment site, a property must already be on the inventory).

COMMITTEE ACTION

Commerce Committee

Joint Favorable Substitute Change of Reference

Yea 26 Nay 0

Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea 45 Nay 0